

Amendment and Response

Applicant: Roger A. Duman

Serial No.: 10/722,240

Filing Date: November 25, 2003

Docket: G180.147.101 / GMI6164

Title: APPARATUS AND METHOD FOR TRANSPORTING CONTAINERS WITHIN A PACKAGING SYSTEM

REMARKS

The following remarks are made in response to the Non-Final Office Action mailed October 19, 2004 ("Office Action"). In the Office Action, the Examiner detailed a Restriction Requirement between species and acknowledged a telephone conference held September 29, 2004 with the undersigned in which a provisional election without traverse was made.

Also in the Office Action, the Examiner rejected claims 1-9, 11-29, 31, 33, 34, 38-46, 48, and 49 under 35 U.S.C. § 102(b) as being anticipated by "the Byrd reference." In the Office Action, the Examiner designated two different references having Byrd as a named inventor: U.S. Patent Nos. 3,659,744 and 3,865,281. The disclosures of the two references are believed to be duplicative in all material respects, as U.S. Patent No. 3,865,281 is a divisional of U.S. Application Serial No. 38/245, now U.S. Patent No. 3,659,744. Thus, the two references will be addressed and referred to collectively as "Byrd." However, all citations or references to specific text and figures are made according to the column and line numbering of U.S. Patent No. 3,865,281. Similarly, the Applicant believes that the rejection of claims 32 and 35 under 35 U.S.C. § 103(a) refers to the claims being unpatentable over either Byrd reference.

The Examiner's indication that claims 36 and 37 would be allowable if rewritten in independent form is noted with appreciation.

With this Response, claim 44 has been amended. Claims 1-49 remain pending in the application and are presented for reconsideration and allowance.

Written Affirmation of Telephonic Election

In the Office Action, the Examiner reiterated a determination in that the instant application contains claims directed to patentably distinct species including the following: Species 1 (FIGS. 4A and 4B); Species 2 (FIG. 4C); Species 3 (FIG. 8A); Species 4 (FIG. 8B); and Species 5 (FIGS. 8C). The Examiner indicated that claims 1-8, 11-13, 15-28, and 31-45 are generic, and that the Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is found allowable.

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With this Amendment and Response, the provisional election without traverse to prosecute the invention of Species 2 is reaffirmed. Claims 1-9, 11-29, 31-46, 48, and 49 are identified as readable on the elected species.

35 U.S.C. §§ 102 & 103 Rejections

The Examiner rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by Byrd. Claim 1 relates, in part, to a method of transporting containers from a first station to a second station within a container filling system, each container defining opposed first and second end sections, the second end section forming a longitudinal recess defined by an inner surface of the sidewall. The method comprises providing a carrier plate having at least one mounting piece, loading a container onto the mounting piece such that the second end section is positioned over the mounting piece and the mounting piece frictionally engages the inner surface of the longitudinal recess, and moving the carrier plate from the first station to the second station, wherein the mounting piece secures the container relative to the carrier plate during movement of the carrier plate. For at least the reasons described below, the cited references fail to teach or suggest the limitations of claim 1.

In rejecting claim 1, the Examiner indicates that Byrd discloses the following: “a container loading station 38,” “a container filling station 40,” “a drive system/transport device comprising a carrier plate 76,” “a drive mechanism 92,” “a mounting piece 80,” “a shoulder 84,” and “a covering station 42.” (Office Action at 3.) Furthermore, the Examiner indicates that elements 52 and 98 could also be construed as “carrier plates.” (Id.)

As a first point of distinction, claim 1 requires “moving the carrier plate from the first station to the second station.” The platform member 76 of Byrd (construed by the Examiner as a carrier plate) is not moved from a first station to a second station. According to Byrd, “the platform means is... lowered to positively transport and accurately position [a container] on a conveyor, which moves the containers to a filling station.” (Byrd at column 2, lines 7-10.) Clearly, Byrd teaches or suggests that the conveyor 22 moves containers between stations, not the platform member 76. At most, the platform member 76 is moved within the container dispenser assembly, or station, but not between stations.

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Furthermore, the conveyor 22, including the plurality of cup holding plates 34, of Byrd fails to teach or suggest the limitations of claim 1. In particular, Byrd expressly designates that each plate 34 of the plurality of cup holding plates 34 includes a plurality of laterally spaced side-by-side openings 36, which support containers by engaging the peripheral surface around the openings 36 with the peripheral beads 68 of the containers. (Byrd at column 3, lines 6-13; column 7, lines 16-20; FIGS. 4, 11 & 12.) Thus, the conveyor 22, including the cup holding plates 34, does not teach or suggest a mounting piece engaging an inner surface of a container, but instead an outer surface.

Additionally, it is unclear how “frame members” 52 and 98 can teach or suggest a carrier plate as required by the limitations of claim 1. Applicant respectfully submits that Byrd fails to teach or suggest that these frame members move at all, much less moving them from a first station to a second station as required by the limitations of claim 1. (Byrd at column 4, lines 26-27; column 6, lines 7-14.)

Finally, the Examiner indicates that the suction cup 80 teaches or suggests a mounting piece as required by the limitations of claim 1. However, the suction cup 80 does not teach or suggest such limitations. For example, Byrd fails to teach or suggest that the suction cup 80 frictionally engages an inner surface of a sidewall of the container. (See, e.g., Byrd at FIGS. 6 & 7.) Furthermore, the suction cup 80 of Byrd does not move between a first station and a second station as otherwise required by the limitations of claim 1.

For at least the reasons described above, it is believed that claim 1 presents patentably distinct subject matter. Claims 2-25 depend from claim 1, and as such, are believed to present patentably distinct subject matter for reasons similar to those described in association with claim 1. As such, the Examiner’s rejection of claims 1-9 and 11-25 is respectfully traversed, with concomitant allowance of claims 1-25, and notice to that effect, requested.

The Examiner also rejected claim 26 under 35 U.S.C. § 102(b) as being anticipated by Byrd, citing the same elements of Byrd described above. Claim 26 relates, in part, to a container filling system for filling containers, each container defining opposing first and second end sections, the second end section forming a longitudinal recess defined by an interior surface of

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the sidewall. The system comprises a first container loading station and a second container filling station. Furthermore, the system comprises a drive system for transporting containers from the first station to the second station. The drive system has a transport device including a carrier plate connected to the drive mechanism and at least one mounting piece assembled to the carrier plate and extending from an upper surface of the carrier plate. The mounting piece is adapted to engage the interior surface of the longitudinal recess of a respective one of the containers and secure the container relative to the carrier plate. For at least the reasons below, claim 26 presents patentably distinct subject matter.

As argued above, none of the platform member 76, the frame member 52, the frame member 98, or the suction cup 80 are taught or suggested as transporting containers from a first station to a second station, much less between a first container loading station and a second container filling station. As described above in association with claim 1, neither the conveyor 22 and its associated structures nor the suction cup 80 teach or suggest the mounting piece and carrier plate required by the limitations of claim 26. For example, Byrd only teaches or suggests that the cup holding plate 34 engages an exterior surface of the containers, not an interior surface. As a result, for at least reasons similar to those described above in association with claim 1, it is believed that claim 26 presents patentably distinct subject matter.

As claims 27-43 depend from independent claim 26, it is believed that they also present patentably distinct subject matter for reasons similar to claim 26. While the Examiner rejected claims 32 and 35 under 35 U.S.C. § 103(a) as unpatentable over Byrd, both claims depend from independent claim 26, which as argued above, is not taught or suggested by the cited references. In light of the above, the Examiner's rejection of claims 26-29, 31-35, and 38-43 under either 35 U.S.C. § 102(b) or § 103(a) and objection to claims 36 and 37 for being dependent upon a rejected base claim is respectfully traversed, with concomitant allowance of claims 26-43, and notice to that effect, requested.

The Examiner rejected claim 44 under 35 U.S.C. § 102(b) as being anticipated by Byrd, citing the elements described above in association with independent claims 1 and 26. Claim 44 as amended relates, in part, to a transport device for use with a container packaging system in

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packaging one or more containers each defining opposing first and second end sections, the second end section forming a longitudinal recess defined by an interior surface of a sidewall. The transport device comprises at least one mounting piece assembled to a carrier plate and extending from a top surface of the carrier plate, the mounting piece adapted to engage the interior surface of the longitudinal recess of a respective one of the containers and secure the container relative to the carrier plate. For at least the reasons described below, it is believed that none of the cited references teach or suggest the limitations of claim 44.

The Examiner indicates that the suction cup 80 teaches or suggests a mounting piece as required by the limitations of claim 44. However, the suction cup 80 does not teach or suggest such limitations. For example, Byrd fails to teach or suggest that the suction cup 80 engages an inner surface of a sidewall of the container. (See, e.g., Byrd at FIGS. 6 & 7.) The remainder of Byrd also fails to teach or suggest the limitations of claim 44. For example, the plurality of a laterally spaced side-by-side openings 36 of the cup holding plate 34 associated with the conveyor 22 engage an exterior surface of the container 58, or the peripheral bead 68 of the container 58. (Byrd at FIGS. 7, 11, & 12.) Thus, as the reference fails to teach or suggest the limitations of claim 44, it is believed that claim 44 presents patentably distinct subject matter.

As claims 45-49 depend from independent claim 44, they are believed to present patentably distinct subject matter for the reasons described in association with amended claim 44. As such, the Examiner's rejection of claims 44-46, 48, and 49 is respectfully traversed, with concomitant allowance of claims 44-49, and notice to that effect, requested.

CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 1-49 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejection of claims 1-9, 11-29, 31-35, 38-46, 48, and 49 and withdrawal of the objection to claims 36 and 37 is respectfully requested with allowance of claims 1-49 and notice to that effect.

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No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Respectfully submitted,

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By his attorneys,

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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 6th day of January, 2005.

By 

Name: Timothy A. Czaja